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FILED IN THE  
U.S. DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

Mar 12, 2025

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

HER MAJESTY THE QUEEN IN RIGHT  
OF CANADA AS REPRESENTED BY  
THE MINISTER OF AGRICULTURE  
AND AGRI-FOOD, a Canadian  
governmental authority,

Plaintiff,

v.

VAN WELL NURSERY, INC., a  
Washington Corporation, MONSON  
FRUIT COMPANY, INC., a Washington  
Corporation, GORDON GOODWIN, an  
individual, and SALLY GOODWIN, an  
individual,

Defendants.

NO. 2:20-CV-00181-SAB

**ORDER GRANTING MOTION  
FOR RECONSIDERATION**

Before the Court is Plaintiff's Motion for Reconsideration of Order Granting Defendants' Motion for Summary Judgment Re: Patent Invalidity, ECF No. 431. Plaintiff is represented by Jennifer Bennett, Daniel Short, Michelle Fischer, Alyssa Orellana, Cary Sullivan, and John O'Donnell. Defendant Van Well Nursery is represented by Kent Doll and Katie Ross. The Goodwin Defendants are

**ORDER GRANTING MOTION FOR RECONSIDERATION ~ 1**

1 represented by Quentin Batjer. Defendant Monson Fruit is represented by Mark  
2 Walters, Mitchell West, and Miles Yanick. The motion was heard without oral  
3 argument.<sup>1</sup>

4 Plaintiff asks the Court to reconsider its Order granting summary judgment  
5 that the patent directed to the Staccato cherry is invalid. Plaintiff asserts the Order  
6 was based on false evidence. Rather, the actual evidence contradicts and disproves  
7 Defendants' invalidity arguments. Specifically, Defendants submitted a PDF copy  
8 of an Excel file—excluding the first ten rows of the native spreadsheet—that  
9 purportedly showed sales of Staccato before the '551 Patent's critical date, along  
10 with Stemilt grower Kyle Mathison's deposition testimony that the spreadsheet  
11 appeared to show Staccato sales. It asserts the excluded rows and Mr. Mathison's  
12 trial testimony conclusively establish that the sales were actually of Sonata, an  
13 entirely different cherry, and could not have been Staccato sales. Additionally, it  
14 maintains that Mr. Mathison's testimony—which was necessary to prove that the  
15 sales listed in the Excel file were not for Staccato—did not come prior to trial.

16 **Motion Standard**

17 Fed. R. Civ. P. 54(b) provides, in part, that “any order or other decision,  
18 however designated, that adjudicates fewer than all the claims or the rights and  
19 liabilities of fewer than all the parties does not end the action as to any of the  
20 claims or parties and may be revised at any time before the entry of a judgment  
21 adjudicating all the claims and all the parties’ rights and liabilities.”

22 Fed. R. Civ. P. 60(b) states the Court may relieve a party from an order for  
23 (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered  
24 evidence that, with reasonable diligence, could not have been discovered in time to  
25 move for a new trial under Rule 59(b); and (3) fraud (whether previously called  
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27 <sup>1</sup> The Court has determined that oral argument is not necessary. *See* LCivR  
28 7.1(i)(3)(B)(iii).

1 intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party, to  
2 name a few reasons. A motion under Rule 60(b) must be made within a reasonable  
3 time, and for the reasons set forth above, no more than a year after the entry of the  
4 order.

5 The Court is also authorized to reconsider its Orders under its inherent  
6 power so long as it has not been divested of jurisdiction. *United States v. Smith*,  
7 389 F.3d 944, 949 (9th Cir. 2004).

8 Reconsideration is an “extraordinary remedy, to be used sparingly in the  
9 interests of finality and conservation of judicial resources.” *Kona Enterprises, Inc.*  
10 *v. Estate of Bishop*, 229 F.3d 877, 890 (9th Cir. 2000). “A district court may  
11 properly reconsider its decision if it (1) is presented with newly discovered  
12 evidence, (2) committed clear error or the initial decision was manifestly unjust, or  
13 (3) if there is an intervening change in controlling law.” *Smith v. Clark Cnty. Sch.*  
14 *Dist.*, 727 F.3d 950, 955 (9th Cir. 2013) (quotation omitted). “There may also be  
15 other, highly unusual, circumstances warranting reconsideration.” *Sch. Dist. No. 1J*  
16 *v. ACandS, Inc.*, 5 F.3d 1255, 1263 (9th Cir. 1993). Whether to grant a motion for  
17 reconsideration is within the sound discretion of the court. *Navajo Nation v.*  
18 *Confederated Tribes and Bands of the Yakima Nation*, 331 F.3d 1041, 1046 (9th  
19 Cir. 2003).

20 **Analysis**

21 As an initial matter, the Court finds that Plaintiff’s Motion is timely. The  
22 Court has not been divested of its jurisdiction over this case. Moreover, Plaintiff  
23 diligently raised the issue after obtaining Mr. Mathison’s trial testimony that  
24 showed Exhibit 38 could only refer to Sonata, not Staccato.

25 The Court also finds it committed clear error in granting summary judgment  
26 on the issue of patent invalidity. New evidence of the complete Exhibit 38 and Mr.  
27 Mathison’s trial testimony create genuine issues of material facts regarding  
28 whether Stemilt sold Sonata, not Staccato, in 2000. Moreover, Defendants have not

1 shown they would be prejudiced if the Court were to reconsider its prior order on  
2 the validity of the patent. It is undisputed that Defendants excluded the first ten  
3 rows of Exhibit 38 that stated the sales were actually of Sonata, an entirely  
4 different cherry, then falsely represented to the Court that Exhibit 38 was an  
5 accurate copy of the original spreadsheet. It would be manifestly unjust to excuse  
6 this behavior at this stage of the proceedings. Defendants' assertions that they  
7 relied on the Court's invalidity order when they waived their right to a jury  
8 contradicts earlier representations to the Court.

9 The Court exercises its inherent authority to reconsider its decision. Plaintiff  
10 has shown there are genuine issues of material fact regarding the validity of the  
11 patent. Plaintiffs are entitled to have the trier of fact consider all relevant evidence  
12 in determining whether its patent is valid.

13 Accordingly, **IT IS HEREBY ORDERED:**

14 1. Plaintiff's Motion for Reconsideration of Order Granting Defendants'  
15 Motion for Summary Judgment Re: Patent Invalidity, ECF No. 431, is  
16 **GRANTED.**

17 2. The Court **VACATES** the Order Granting Defendants' Motion for  
18 Summary Judgment Re: Patent Invalidity, ECF No. 287.

19 **IT IS SO ORDERED.** The District Court Clerk is hereby directed to enter  
20 this Order and to provide copies to counsel.

21 **DATED** this 12th day of March 2025.



25 A handwritten signature in blue ink that reads "Stanley A. Bastian".  
26

27 Stanley A. Bastian  
28 Chief United States District Judge